



SIGn Jurnal Hukum

E-ISSN: 2685 – 8606 || P-ISSN: 2685 – 8614

<https://jurnal.penerbitsign.com/index.php/sjh/article/view/v7n2-2>

Vol. 7 No. 2: October 2025 - March 2026

Published Online: October 1, 2025

Article Title

The Paradox of Implementing Restorative Justice at the Investigation Stage: A Systematic Weakening of Sentence Enhancement for Repeat Offenders

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How to cite:

Adiningsih, Y., & Batubara, G. T. (2025). The Paradox of Implementing Restorative Justice at the Investigation Stage: A Systematic Weakening of Sentence Enhancement for Repeat Offenders. *SIGn Jurnal Hukum*, 7(2), 627-646. <https://doi.org/10.37276/sjh.v7i2.496>



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ABSTRACT

The progressive adoption of restorative justice at the investigation stage has created the unintended consequence of systematically weakening law enforcement against repeat offenders. This study aims to analyze how the normative framework of restorative justice, particularly Police Regulation Number 8 of 2021, and its field implementation create a juridical gap that directly neutralizes the sentence enhancement mechanism. Employing juridical-normative and juridical-empirical approaches, this study confronts the ideal legal text (das sollen) with the practical reality (das sein) at the Criminal Investigation Unit of the Sumedang Regency Police. Key findings indicate that the regulation's definition of recidivism, which is exclusively tied to a "court judgment," renders restorative settlement records—which are purely administrative in nature—devoid of juridical evidentiary force. Consequently, offenders who repeatedly utilize the restorative path will always be considered first-time offenders. This condition opens a dangerous loophole for impunity and the weakening of the deterrent effect. This study concludes that without a policy reconstruction that grants limited legal status to restorative records and integrates them into a unified criminal justice data system, the noble goal of restorative justice risks sacrificing the principles of legal certainty and public protection. Therefore, urgent regulatory reform is necessary to synchronize the objective of restoration with the imperative of effective law enforcement against repeat offenders.

Keywords: Investigation Stage; Repeat Offenders; Restorative Justice; Sentence Enhancement.

INTRODUCTION

The Indonesian criminal justice system, as the primary instrument of law enforcement, serves the crucial function of anticipating crime escalation and curbing the rate of criminality within society (Gindriansyah et al., 2022). However, mechanisms oriented toward formal punishment are often considered ineffective in reducing rates of reoffending and frequently fail to achieve the goal of rehabilitating perpetrators (Karjono et al., 2024). The evolution of modern criminal law discourse signals a paradigm shift, moving from an initial focus on retribution toward a more humanistic and recovery-oriented approach (Nasrullah, 2023). This transition is a response to the limitations of the conventional system, which tends to neglect the restoration of victims' losses and the promotion of social reconciliation (Laia, 2024b).

Philosophically, the essential purpose of law is to achieve justice, a principle famously asserted by Aristotle (1980). This perspective is enriched by Radbruch (1932), who argued that ideal law enforcement must balance three fundamental pillars: justice (*gerechtigkeit*), utility (*Zweckmäßigkeit*), and legal certainty (*rechtssicherheit*). In the context of a national criminal justice system historically dominated by retributive and restitutive justice, a strong public demand has emerged for the implementation of restorative justice (Iskandar et al., 2024). This approach is viewed as more capable of accommodating the interests of both victims and perpetrators in a balanced manner by restoring the situation to its original state (Aulia et al., 2024).

Restorative justice is defined by Zehr (2015) as an inclusive process that involves all stakeholders affected by a criminal act. Its purpose is to collectively identify the

resulting harms, needs, and obligations (Waluyo, 2015). The focus is no longer limited to punishing the perpetrator but extends to victim recovery, perpetrator accountability, and fulfillment of community needs. This concept fundamentally aligns with the local wisdom of Indonesian society, which emphasizes deliberation to achieve consensus as a means of conflict resolution (Laia, 2024a). The primary goal is to secure peace and prevent animosity (Oktobrian et al., 2023).

The adoption of the restorative justice concept into Indonesia's positive legal framework has been concretely manifested by the Indonesian National Police. This institution, through its legally mandated discretionary authority (Denovita & Puspitosari, 2022), has implemented restorative justice principles at the investigation stage (Sukardi, 2020). The primary juridical basis for this practice is Police Regulation Number 8 of 2021. This regulation comprehensively governs the mechanisms for out-of-court case settlements and reinforces previous policies, such as those articulated in Head of Police Regulation Number 6 of 2019 (Akbar, 2022).

Nevertheless, this progressive adoption of restorative justice at the investigation stage has inadvertently created a serious legal paradox. Resolving cases through this mechanism culminates in an Order to Terminate Investigation, meaning it does not result in a final and binding court judgment. Consequently, the criminal act committed by the individual is not formally recorded in the criminal record system. This situation creates a dangerous legal loophole, particularly when the same individual commits another crime in the future—a phenomenon known as a repeat offense.

The most critical implication of the absence of a court conviction is the paralysis of the sentence enhancement mechanism for repeat offenders. According to criminal law doctrine, the status of a recidivist can only be established through a final and binding court conviction (*inkracht*) for a prior offense (Nurfatlah et al., 2024). Without such juridical proof, law enforcement officials lose the grounds to apply sentence enhancement provisions as stipulated in Law Number 1 of 1946. As a result, a perpetrator who repeatedly commits crimes but whose cases are consistently resolved through restorative means will always be legally considered a first-time offender.

Studies on the application of restorative justice have indeed been a focus of prior researchers. For instance, Reza and Siregar (2023) as well as Hermawan and Rizal (2024) have examined its implementation within the juvenile justice system. However, existing literature tends to concentrate on the philosophical aspects and implementation challenges for specific groups. None has specifically dissected how the administrative nature of restorative settlements at the police level cripples a vital state instrument for addressing repeat offenders. This research is presented to fill that critical gap.

The novelty of this research lies in its juridical-empirical analysis of the impact of administrative restorative justice recording at the investigation stage, specifically examining the weakening of the sentence enhancement mechanism for repeat offenders. The originality of this work centers on the argument that without clear juridical integration between police administrative records and the broader criminal justice system, restorative justice risks becoming a systemic flaw. In turn, this undermines the long-term objectives of criminal law enforcement: providing a deterrent effect and protecting society from habitual criminals.

Thus, this research holds significant importance. Theoretically, it contributes to the legal discourse on the tension between the goal of utility (through reconciliation) and legal certainty (through firm action against repeat offenders). Practically, its findings are expected to provide vital policy recommendations for the Indonesian National Police, the Prosecutor's Office, and the legislature. The aim is to formulate regulatory reforms capable of harmonizing the noble objectives of restorative justice without creating a haven for those who repeatedly commit crimes.

Based on this background, this research has three primary objectives. *First*, to examine the regulation of restorative justice at the investigation stage within the Indonesian National Police. *Second*, to analyze the practical implementation of restorative justice at the investigation stage by the Sumedang Regency Police. *Third*, to formulate strategic measures to minimize the negative implications of applying restorative justice on sentence enhancement for repeat offenders. The expected benefit of this research is the provision of a comprehensive academic guide for legal practitioners, policymakers, and academics in refining the implementation of restorative justice in Indonesia.

METHOD

This research is designed as a descriptive-analytical legal study, aiming to comprehensively dissect the issues at the intersection between the law as written (*das sollen*) and the reality of its implementation in the field (*das sein*) (Qamar & Rezah, 2020). Given this complexity, the study adopts a mixed-methods approach, integrating both juridical-normative and juridical-empirical methodologies. The justification for this integrated approach is based on the need not only to understand how restorative justice is formally regulated but also how it is practiced. Furthermore, this research examines the legal consequences that arise from the interaction between these norms and practices, particularly within the context of handling repeat offenders.

Operationally, the research approach is directly linked to the objectives to be achieved. The juridical-normative approach is employed to address the first research

objective by examining and interpreting the positive legal norms governing restorative justice, investigation, and sentence enhancement. Subsequently, the juridical-empirical approach is applied to answer the second research objective by deeply exploring and analyzing the practical implementation of restorative justice at the Sumedang Regency Police. Finally, a conceptual approach—which examines relevant legal doctrines and theories such as justice, legal certainty, and utility—is used as the analytical framework to discuss the findings and formulate an answer to the third research objective.

Research data was collected through two primary channels. For the normative analysis, library research was conducted to systematically gather and review primary, secondary, and tertiary legal materials (Sampara & Husen, 2016). Primary legal materials include core statutes such as Law Number 1 of 1946, Law Number 8 of 1981, Law Number 2 of 2002, Law Number 1 of 2023, and the principal technical regulation, Police Regulation Number 8 of 2021. Secondary legal materials consist of academic literature, legal journals, books, and previous research findings. Meanwhile, tertiary legal materials include legal dictionaries and encyclopedias to support the interpretation of technical terms.

For the empirical analysis, field research was carried out at the Criminal Investigation Unit (CIU) of the Sumedang Regency Police. Primary data was collected through semi-structured interviews with three investigators, who were selected using purposive sampling. The selection criteria were based on their direct experience in handling cases resolved through the restorative justice mechanism. Additionally, non-participant observation was conducted to observe the administrative and documentation processes of restorative justice cases. The goal was to gain a contextual understanding of how these records are managed within the internal police system.

The data analysis technique in this study is qualitative and is executed in an integrated manner through three stages (Irwansyah, 2020). The first stage is a deductive-normative analysis, where data from library research is analyzed to construct the ideal legal framework (*das sollen*) concerning the regulation of restorative justice and the requirements for sentence enhancement for repeat offenders. The second stage is a thematic-inductive analysis, where interview transcript data from the field is analyzed to identify patterns, key themes, and practical obstacles in the implementation of restorative justice (*das sein*). The final stage is synthesis. Here, the findings from the ideal legal framework (*das sollen*) are critically confronted with the findings from the reality of field practice (*das sein*). This synthesis process is used to identify any legal gaps or vacuums, thereby enabling the researcher to answer all three research objectives comprehensively and argumentatively.

RESULTS AND DISCUSSION

A. The Normative Framework of Restorative Justice and Its Limitations within the Criminal Justice System

The regulation of restorative justice at the investigation stage within the Indonesian criminal justice system marks a significant evolution, juridically institutionalized through Police Regulation Number 8 of 2021. This regulation functions as a special law (*lex specialis*), providing formal legitimacy for investigators to pursue non-litigation pathways—a breakthrough from the conventional, punitive paradigm of law enforcement. The existence of Police Regulation Number 8 of 2021 not only affirms previous internal police policies but also fundamentally alters the landscape of investigators' authority in the criminal case resolution process in Indonesia (Purba & Pane, 2025).

Fundamentally, Police Regulation Number 8 of 2021 provides the legal basis for investigators to apply the discretionary authority mandated by Law Number 2 of 2002. The authority to “take other measures” is interpreted as a gateway to divert a case from the formal justice system to a penal mediation mechanism (Denovita & Puspitosari, 2022). Restorative justice, therefore, becomes a concrete manifestation of this discretionary power. The legal consequence of applying this discretion is highly significant, as it culminates in the termination of the investigation through the issuance of an Order to Terminate Investigation based on “the interests of the law.” This mechanism is permitted by Law Number 8 of 1981, provided that the requirements in Police Regulation Number 8 of 2021 are met (Sofian, 2021).

To ensure that this discretionary power is not exercised arbitrarily, Police Regulation Number 8 of 2021 establishes a series of strict requirements, categorized as material and formal. A thorough analysis of these requirements is crucial to understanding the scope and normative limitations of restorative justice itself. These conditions act as a safety valve, ensuring that only specific, appropriate cases are resolved outside the formal judicial mechanism, thereby maintaining a balance between the interest of restoration and the broader interest of law enforcement.

The material requirements, as stipulated in Article 5 of Police Regulation Number 8 of 2021, limit the application of restorative justice to criminal acts that do not cause public unrest or social conflict. Other conditions include that the offense is not a serious crime, such as terrorism, corruption, or a capital offense. This provision explicitly directs restorative justice toward handling less serious crimes. However, the absence of a maximum limit for material damages or a maximum

sentencing threshold in this article creates a gray area, affording investigators a very broad scope of interpretation in determining a case's eligibility.

The most critical analysis of the material requirements lies in Article 5 point e of Police Regulation Number 8 of 2021, which states that restorative justice cannot be applied to "a repeat offender of a Criminal Act based on a Court Judgment." The phrasing "based on a Court Judgment" carries profound juridical implications. Normatively, this phrase asserts that the status of a recidivist can only be attached to an individual if there has been a final and binding court verdict (*inkracht van gewijsde*) for a previous criminal act. This regulation, in other words, strictly defines recidivism within a purely judicial framework, disregarding any other non-judicial records.

The logical consequence of this wording is the creation of a paradoxical limitation. On the one hand, the regulation aims to prevent recidivists from benefiting from restorative justice. On the other hand, because a settlement through restorative justice itself does not produce a court judgment, a perpetrator whose case is resolved via this mechanism will legally never meet the criteria of a recidivist as defined by this very regulation. Thus, the normative framework inherently contains a fundamental flaw that could potentially paralyze its own long-term objective.

Furthermore, the formal requirements stipulated in Article 6 of Police Regulation Number 8 of 2021 focus on the procedural aspects of restoration, namely a "peace agreement letter" between the perpetrator and the victim and the "fulfillment of the victim's rights." This fulfillment can take the form of returning property or providing compensation for damages. The documents generated from this process, such as the peace agreement and the statement of rights fulfillment, hold legal force in the civil domain and serve as proof of reconciliation between the parties. However, it is crucial to emphasize that these documents do not have the status of a criminal conviction.

The non-judicial character of these restorative agreement documents is the core of the problem. Although the agreement forms the basis for an investigator to issue an Order to Terminate Investigation, it does not alter the fact that there is no admission of guilt or proof of culpability formalized in a court judgment. Consequently, the record of the criminal act committed by the perpetrator will only be stored as internal administrative data within the police force. This record holds no juridical evidentiary value in a future court proceeding.

This normative limitation reveals a tension between the goals of utility and legal certainty. From a utility perspective, Police Regulation Number 8 of 2021

is highly effective in reducing the burden on the justice system and accelerating recovery for victims. However, from the perspective of legal certainty, the absence of a valid juridical record creates uncertainty in handling the same perpetrator in the future. This situation has the potential to weaken the deterrent effect and the public protection function of the criminal justice system.

The discourse surrounding the scope of restorative justice is also evolving in relation to more complex types of offenses, such as narcotics abuse (Lestari et al., 2023; Parindo, 2025). Although Police Regulation Number 8 of 2021 tends to exclude drug cases from some formal requirements, other research indicates a push to apply restorative principles, particularly at the investigation stage, for addicts and victims of drug abuse (Pasaribu et al., 2024). It suggests that while academic discourse continues to advocate for the expanded application of restorative justice, the current normative framework still leaves fundamental procedural issues unresolved regarding the recording and legal status of perpetrators.

Overall, the analysis of the normative framework indicates that Police Regulation Number 8 of 2021 has successfully established a legitimate and procedural alternative dispute resolution mechanism. However, the regulation simultaneously creates an inherent limitation through its very narrow, court-judgment-bound definition of recidivism. This limitation is the primary source of the legal vacuum whose impact will be further explored at the level of field implementation. This ideal legal framework (*das sollen*), ultimately, presents a dual reality: a progressive instrument for peace that concurrently contains the seeds of a long-term weakening of law enforcement.

B. Field Implementation and Identification of the Juridical Gap: A Case Study of the Sumedang Regency Police

The analysis of the ideal legal framework (*das sollen*), as previously described, necessitates a critical confrontation with the reality of field practice (*das sein*) (Qamar & Rezah, 2022). The field research conducted at the Criminal Investigation Unit (CIU) of the Sumedang Regency Police aimed to dissect how the norms within Police Regulation Number 8 of 2021 are translated into day-to-day investigative actions. Through this juridical-empirical approach, it is possible to concretely identify how the restorative justice mechanism is implemented and how frontline investigators interpret and manage the administrative consequences of each case settlement.

Internal data from the Sumedang Regency Police show that restorative justice is no longer a mere theoretical concept; it has become a massively utilized law enforcement instrument. A total of 159 cases were resolved through this

approach in 2023, with another 139 cases in the first half of 2024. The majority of these cases involved offenses against property and persons, such as minor assault, theft, fraud, and embezzlement. These figures indicate a high level of acceptance and effectiveness of this mechanism in handling cases that would traditionally accumulate and burden the formal criminal justice system.

The implementation process of restorative justice at the Sumedang Regency Police proceeds according to the procedural workflow outlined by the regulation. After a police report is filed and a preliminary examination is conducted, investigators assess to determine if a case meets the criteria in Police Regulation Number 8 of 2021. If deemed eligible, the option of settlement through penal mediation is offered to both parties. This process is participatory, requiring that a peace agreement be reached without coercion, and often involves facilitation by community leaders or family members to bridge communication between the victim and the perpetrator.

In this stage, the investigator's role transforms from that of a repressive law enforcer to a neutral facilitator. They are tasked with ensuring that all formal requirements, such as the application letter and the peace agreement, are administratively fulfilled. Moreover, they are responsible for maintaining a balanced negotiation process, ensuring that the victim's rights—especially the right to restitution—are genuinely fulfilled before an Order to Terminate Investigation is issued. The success of this process is greatly supported by internal policy backing and the availability of human resources who understand the philosophy behind restorative justice.

However, the most crucial point of this empirical analysis lies in how the outcomes of the restorative process are documented and what legal status that documentation holds. Observations and thematic-inductive interviews with investigators at the Sumedang Regency Police confirm a practice of singular and limited recording. Each case resolved through restorative justice is recorded in the internal register of the investigation unit and also uploaded to the Indonesian National Police's Electronic Investigation Management System. This record-keeping serves as an important internal administrative trail for the police.

Nevertheless, an in-depth analysis of the investigators' statements reveals a consistent, central theme: a clear understanding of the limited legal force of these records. One investigator stated:

"This restorative record is important for our internal data, for monitoring. However, honestly, in court later, this is not considered a legal judgment. The judge will look at the Police Clearance Certificate, and on there, the perpetrator's status is clean."

Another investigator added:

"If they repeat the same act, of course, the previous restorative record becomes an internal consideration for us not to offer a peaceful settlement again. Nevertheless, to enhance the sentence in court, we have no grounds. The prosecutor and judge need proof of a trial verdict, not a peace agreement we arranged."

The statements above vividly demonstrate that practitioners on the ground are fully aware that these administrative records lack value as formal juridical evidence. They also confirm that while a restorative record has an internal preventive function at the police level, it becomes inert when brought into the broader criminal justice system. It is from these empirical findings that the juridical gap between the ideal law (*das sollen*) and field practice (*das sein*) is sharply identified.

On one hand, the practice at the Sumedang Regency Police has successfully applied restorative justice principles to achieve social utility (*doelmatigheid*). On the other hand, this practice directly collides with the weakness in the normative framework (*rechtmatigheid*) analyzed in the previous sub-chapter. This practice of administrative-only recording is a direct consequence of the absence of a court judgment, which in turn creates a situation where Article 5 point e of Police Regulation Number 8 of 2021 becomes inoperable.

A critical synthesis of the normative and empirical findings indicates that this issue is not merely a technical-administrative matter but a systemic problem. This gap creates a cycle wherein a perpetrator can repeatedly commit minor offenses, resolve them through restorative channels, and have their legal status perpetually "whitewashed" back to that of a first-time offender. The reality at the Sumedang Regency Police is a real-world reflection of how a progressive regulation can produce unintended consequences when not synchronized with the entire criminal procedure system.

A similar problem has been identified in the context of handling different types of criminal offenses, indicating that this issue is not case-specific. Research by [Scondery \(2024\)](#) on the application of restorative justice in narcotics cases at the Serang Regency Police, though focused on a different crime category, also highlighted challenges in supervision and long-term consequences for perpetrators. These comparative findings reinforce the argument that the absence of an integrated recording mechanism with legal force is a fundamental weakness in the implementation of restorative justice at the police level in general, not limited to the case study in Sumedang.

Ultimately, the implementation in the field demonstrates a procedural success that conceals a potential substantive failure. The success in reconciling parties and reducing the judicial caseload is achieved by sacrificing a critical law enforcement instrument: the ability to identify and impose proportional sanctions for repeat offenses. The identified juridical gap is not a mere anomaly but a manifestation of the inherent tension between the philosophy of restoration and the need for legal certainty within the criminal justice system.

C. Analysis of Implications: The Paradox of Restorative Justice and the Weakening of the Penal System

The juridical gap identified between the normative framework of restorative justice and its field implementation is far more than a procedural issue. This gap engenders a series of systemic implications that threaten to weaken the entire architecture of criminal law enforcement. The analysis at this stage moves beyond simply identifying the problem to dissecting its consequences. The primary implication of the non-juridical status of restorative records is the creation of a fundamental paradox: a policy designed to enhance efficiency and humanity within the justice system inadvertently creates a loophole for repeat offenses and erodes the core pillars of penal philosophy.

The first paradox manifests in a direct clash between the goals of utility and legal certainty. From the perspective of utilitarianism, popularized by Jeremy Bentham, the application of restorative justice at the Sumedang Regency Police could be deemed a success. The policy tangibly produces the greatest happiness for the greatest number by reducing court backlogs, accelerating victim restitution, and maintaining social harmony (Pally, 2024). However, this short-term utility is ironically achieved at the expense of legal certainty, a principle that, according to Mertokusumo (2014), guarantees that the law will be applied consistently (Sunaryo & Purnamawati, 2019).

This weakening of legal certainty occurs because the system fails to provide predictable consequences for perpetrators who reoffend. When an offender can repeatedly commit criminal acts without ever being juridically recorded as a recidivist, the law loses its predictability. Society and potential victims no longer have an assurance that the criminal justice system can provide effective protection against the threat of repeat offenders. Thus, a policy that is highly beneficial on one hand nullifies certainty on the other—even though certainty is one of the essential goals of the law itself.

Furthermore, this implication moves from a theoretical plane to a tangible, practical threat: the opening of a “revolving door” for offenders. The system’s

failure to formally identify recidivist status means that the instrument of sentence enhancement—one of the state’s primary tools for deterring repeat offenders—is rendered impotent. The threat of reoffending is not a minor issue; it is a persistent challenge in Indonesia’s criminal justice system, indicating failures in rehabilitation and prevention processes ([Hersyanda et al., 2024](#)).

By neutralizing the sentence enhancement mechanism, this juridical gap directly weakens the state’s ability to respond to that threat. A shrewd offender can exploit this loophole, recognizing that as long as their criminal acts can be negotiated through restorative channels, they will always evade more severe legal consequences. As a result, instead of suppressing repeat offenses, the current system risks creating an incentive for offenders to continually commit minor crimes without fear of escalating sanctions.

From the perspective of substantive justice, this situation gives rise to a profound ethical dilemma when analyzed through the lens of Rawls’s theory of justice as fairness. At an individual level, restorative justice appears eminently fair because it balances the interests of the victim and the perpetrator at a single point in time. However, when viewed from the original position behind a veil of ignorance—where we do not know if we will be the perpetrator, the current victim, or a future victim—the current system becomes unjust.

The system systematically prioritizes the interests of first-time offenders and the swift resolution of cases at the expense of long-term protection for the most vulnerable members of society: future potential victims. According to [Rawls \(2001\)](#), the basic structure of society (including its legal system) must be arranged to provide the greatest benefit to the least advantaged. In this context, a policy that creates a predictable risk for future victims clearly fails to meet this principle of justice. This is a form of structural injustice hidden behind a seemingly humane practice ([Garcia et al., 2020](#)).

Furthermore, this finding places previous research into a new and broader context. Studies by [Reza and Siregar \(2023\)](#) and [Hermawan and Rizal \(2024\)](#) meticulously identified various challenges in applying restorative justice for children. However, their focus tended toward aspects of child protection and appropriate resolution mechanisms. This study expands that discourse by demonstrating that the problem of a non-juridical record is not an issue specific to the juvenile justice system. It is a fundamental design flaw in the very architecture of Police Regulation Number 8 of 2021 itself.

In other words, the problem is systemic and cross-contextual. Both juvenile and adult offenders whose cases are resolved through restorative channels

will equally evade the juridical radar and, consequently, cannot be classified as recidivists. The implication is that the required solution is not merely a procedural adjustment for a specific group, but a structural reform that touches the core of how the criminal justice system defines and records repeat offenses in the era of restorative justice.

A synthesis of these various implications reveals that the policy of restorative justice at the investigation stage has created a systemic vulnerability. The noble goal of humanizing the legal process and providing restitution has produced the unintended consequences of weakening the preventive and repressive functions of criminal law. The criminal justice system, which should function as a coherent whole, is now fragmented between the police subsystem, oriented toward peaceful resolution, and the judicial subsystem (*prosecution and courts*), which operates based on formal juridical evidence.

The absence of a juridical bridge between these two subsystems is the primary source of the negative implications described. The administrative record at the police station becomes “dead information” that cannot be resurrected as evidence in court. Ultimately, this paradox threatens to delegitimize both restorative and retributive justice. Restorative justice may come to be seen as an overly lenient mechanism that is ineffective at preventing crime. In contrast, the formal justice system’s ability to enforce the law proportionally is impeded.

Thus, this analysis of implications firmly rejects the view that the issue raised is merely technical. It is a fundamental problem that touches the heart of the philosophy and purpose of punishment: how to balance forgiveness and accountability, restoration and protection, and utility and legal certainty. Failure to address this paradox will not only perpetuate the cycle of reoffending but also risk eroding public trust in the integrity of the criminal justice system as a whole. This complex problem demands a careful and comprehensive policy reconstruction, which will be discussed in the next section.

D. Policy Reconstruction: Toward Synchronizing Restorative Justice and Law Enforcement for Repeat Offenders

The analysis of the restorative justice paradox and the weakening of the penal system demands a policy response that is reconstructive, not merely reactive. Addressing the identified juridical gap requires more than minor procedural adjustments; it necessitates a reformulation of how the legal system views, records, and assigns consequences to non-litigation case resolutions. This reconstruction aims to synchronize the noble objectives of restorative justice with the imperative of law enforcement against repeat offenders, ensuring that these two pillars can operate in harmony rather than in opposition.

The most fundamental reconstructive step is regulatory reform. The key to bridging the current legal vacuum is to grant a new juridical status to the outcomes of restorative justice settlements. The primary proposal is to revise Police Regulation Number 8 of 2021 or to form a derivative regulation at the level of a Government Regulation, as mandated by Law Number 1 of 2023, which would explicitly create a new category of legal record, such as a “Resolution of Cases Based on Restorative Justice” or a “Justice Diversion Record.”

This record must be clearly distinguished, juridically, from a “criminal conviction.” It would not declare the perpetrator “guilty” in the judicial sense, thus not violating the presumption of innocence, and would not appear on a Police Clearance Certificate for general purposes. However, this record must possess limited legal standing within the scope of the criminal justice system. It means that if the same perpetrator re-enters the justice system, this record could be accessed by investigators, prosecutors, and judges as authentic evidence that the individual was previously involved in a criminal act that was resolved peacefully.

The establishment of this new legal status directly addresses the challenge posed by the Principle of Legality. The principle that there can be no crime and no punishment without a pre-existing law (*nullum delictum nulla poena sine praevia lege poenali*) demands that any legal consequence, including sentence enhancement, must be based on a pre-existing regulation (Ramadhani et al., 2024). By providing a clear legal basis for a “Justice Diversion Record,” its use as a consideration for future sentence enhancements becomes normatively valid and not arbitrary.

Nevertheless, the formulation of this new regulation must be accompanied by a critical analysis of its potential obstacles. The primary challenge is to precisely define the scope and definition of this record to avoid inadvertently creating a veiled “administrative punishment.” There must be clear limitations regarding which types of offenses would generate such a record, the validity period of the record before it is considered expired, and the procedure for its use in the evidentiary process in court. Without this clarity, regulatory reform risks creating new legal uncertainties and being vulnerable to constitutional challenge.

The second reconstructive step, inseparable from regulatory reform, is the integration of law enforcement data systems. A new legal record is meaningless if it is siloed within one institution and inaccessible to others. Therefore, it is essential to achieve technological synchronization between the Electronic Investigation Management System at the police, the Case Handling System at the prosecutor’s office, and the Case Tracking Information System (SIPP) at the courts.

This integration would create an integrated digital footprint for every individual who encounters the law. When a prosecutor receives a case file, they can automatically see if the suspect has a prior history of restorative settlements. Likewise, judges, when imposing a sentence, would have comprehensive information on the defendant's criminal history, including both formal convictions and peaceful resolutions. It would enable a more proportional and just application of the law (Setiawan et al., 2024).

Of course, implementing this data system integration faces significant challenges. Issues of interoperability between different technological platforms, data security, privacy protection, and potential bureaucratic resistance among agencies are real obstacles that must be anticipated. Strong political will and the establishment of an integrated criminal justice data management body are necessary to ensure this ambitious project can be executed effectively and accountably.

The third reconstructive step is strengthening coordination and unifying perspectives among law enforcement officials. Sophisticated regulations and technology will be futile if the actors in the field—police, prosecutors, and judges—do not share a common understanding and interpretation of the legal status of restorative records. Joint training programs and the development of technical guidelines, agreed upon by all three institutions, are required to ensure that a “Justice Diversion Record” is treated consistently across all stages of the criminal justice system.

This coordination also aims to broaden the operational definition of the doctrine of repeat offenses itself. While the doctrine of recidivism has traditionally referred only to a judge's verdict (Nurfatlah et al., 2024), a unified perspective could enrich the concept of reoffending to include repeated criminal acts evidenced by a legally valid restorative record. It does not mean changing the fundamental principles of criminal law, but rather adapting it to remain relevant in responding to the increasing diversity of case resolution mechanisms.

Ultimately, all these reconstructive efforts must be grounded in a higher philosophical objective: to achieve a more harmonious balance among the three fundamental legal values according to Radbruch. This reform aims to preserve the utility of restorative justice while strengthening legal certainty in the response to repeat offenders, which will, in turn, realize a more substantive justice for all of society. This policy reconstruction is not a step to weaken the restorative spirit; it is an effort to mature it—integrating it fully into the criminal justice system so that it can function as an effective instrument of restoration without inadvertently sacrificing the protective function embodied by criminal law.

CONCLUSIONS AND SUGGESTIONS

Based on the results and discussion, it can be concluded that the regulation of restorative justice at the investigation stage through Police Regulation Number 8 of 2021 is a progressive step. However, it contains an inherent, fundamental weakness. The normative framework creates a paradoxical limitation by narrowly defining recidivism as being solely “based on a Court Judgment.” Consequently, it legally nullifies the possibility for a perpetrator whose case is resolved restoratively to be considered a recidivist in the future. This design flaw is the primary source of the legal vacuum that triggers systemic implications for criminal law enforcement.

The implementation of restorative justice at the Sumedang Regency Police empirically confirms the existence of this juridical gap. Although proven highly effective in resolving minor criminal offenses and providing short-term social utility, the practice in the field yields case records with a purely administrative status, lacking juridical evidentiary force. As a consequence, these records become “dead information” that cannot be integrated into the broader criminal justice system. This situation neutralizes the state’s ability to identify and impose firm sanctions on repeat offenders.

The synthesis of these findings is that the policy of restorative justice at the investigation stage, in its current form, has created a paradox that sacrifices the principle of legal certainty for procedural utility. To overcome this, a comprehensive policy reconstruction is required as a call to action. It is strongly suggested that policymakers—specifically the Indonesian National Police, together with the Coordinating Ministry for Political, Legal, and Security Affairs, and the Supreme Court—promptly formulate regulatory reforms. This step could take the form of revising Police Regulation Number 8 of 2021 or establishing a derivative regulation that creates a new legal status for restorative resolutions—a “Justice Diversion Record” with limited legal standing as a basis for considering sentence enhancement, without violating the presumption of innocence.

Furthermore, this regulatory reform must be simultaneously supported by efforts to create an integrated law enforcement data system among the police, prosecution, and courts. This technological synchronization is necessary to ensure that the new legal record can be accessed and utilized consistently throughout the criminal justice chain. For future research, it is recommended to conduct longitudinal studies on the effectiveness of these proposed reforms post-implementation. It is also recommended to explore the socio-legal challenges in shifting law enforcement officials’ perceptions of the definition of reoffending in the era of restorative justice. These steps are essential for maturing the practice of restorative justice in Indonesia, ensuring it functions as an effective instrument of restoration without creating a loophole for the impunity of repeat offenders.

REFERENCES

- Akbar, M. F. (2022). Pembaharuan Keadilan Restoratif dalam Sistem Peradilan Pidana Indonesia. *Masalah-Masalah Hukum*, 51(2), 199-208. <https://doi.org/10.14710/mmh.51.2.2022.199-208>
- Aristotle. (1980). *The Nicomachean Ethics* (Trans. by D. Ross). Oxford University Press.
- Aulia, A., Doorson, S., & Hosnah, A. U. (2024). Tinjauan Hukum atas Tindak Pidana Penadahan (Fokus pada Pengaturan, Pertanggungjawaban Pidana, dan Penyelesaian Berprinsip Restorative Justice di Indonesia). *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 2(1), 27-38. <https://doi.org/10.61104/alz.v2i1.210>
- Denovita, A. H., & Puspitosari, H. (2022). Efektivitas Mediasi Penal Pada Proses Penyidikan Kasus Kekerasan Perspektif Restorative Justice (Studi di Kepolisian Resor Bojonegoro). *Yustisia Tirtayasa: Jurnal Tugas Akhir*, 2(2), 89-105. <https://doi.org/10.51825/yta.v2i2.14352>
- Garcia, V., Disemadi, H. S., & Arief, B. N. (2020). The Enforcement of Restorative Justice in Indonesia Criminal Law. *Legality: Jurnal Ilmiah Hukum*, 28(1), 22-35. <https://doi.org/10.22219/ljih.v28i1.10680>
- Gindriansyah, R., Makarao, M. T., & As, M. Z. (2022). Tinjauan Penerapan Restorative Justice dalam Proses Perkara Tindak Pidana Ringan di Tingkat Penyelidikan dan Penyidikan Polrestabes Bandung. *Veritas: Jurnal Progam Pascasarjana Ilmu Hukum Universitas Islam As-Syafiiyah*, 8(2), 110-126. Retrieved from <https://jurnal.uia.ac.id/index.php/veritas/article/view/2065>
- Hermawan, T., & Rizal, M. (2024). Penyelesaian Tindak Pidana Anak Melalui Pendekatan Restorative Justice (Studi di Unit Pelayanan Perempuan dan Anak Satuan Reserse dan Kriminal Kepolisian Resor Karanganyar). *Jurnal Cakrawala Ilmiah*, 3(8), 2291-2306. Retrieved from <https://bajangjournal.com/index.php/jci/article/view/7653>
- Hersyanda, M. D., Lubis, I. S., Ikhwan, N., Septriani, D., & Haqqi, M. (2024). Efektivitas Sanksi Pidana Terhadap Pengulangan Kejahatan (Residivisme) di Indonesia. *Jurnal Ilmiah Mahasiswa Multidisiplin*, 1(3), 253-265. <https://doi.org/10.71153/jimmi.v1i3.141>
- Irwansyah. (2020). *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*. Mirra Buana Media.
- Iskandar, I., Maswain, G., & Halim, A. (2024). Penegakan Hukum oleh Kejaksaan Negeri Kota Bandung Berdasarkan Restorative Justice dalam Penyelesaian Perkara Tindak Pidana. *Maqasidi: Jurnal Syariah dan Hukum*, 4(1), 152-172. <https://doi.org/10.47498/maqasidi.v4i1.3260>
- Karjono, A., Malau, P., & Ciptono, C. (2024). Penerapan Keadilan Restoratif dalam Hukum Pidana Berbasis Kearifan Lokal. *Jurnal Usm Law Review*, 7(2), 1035-1050. <https://doi.org/10.26623/julr.v7i2.9571>

- Laia, F. F. D. (2024a). Restorative Justice and Living Law Based on Dayak Ngaju Adat Law: A Comprehensive Analysis. *SIGn Jurnal Hukum*, 6(2), 68-84. <https://doi.org/10.37276/sjh.v6i2.363>
- Laia, F. F. D. (2024b). The Urgency of Enacting Government Regulation on Community Service Sentence in Indonesian under the New Penal Code. *SIGn Jurnal Hukum*, 6(1), 1-16. <https://doi.org/10.37276/sjh.v6i1.350>
- Law of the Republic of Indonesia Number 1 of 1946 on the Penal Code Regulations. <https://www.dpr.go.id/dokumen/jdih/undang-undang/detail/814>
- Law of the Republic of Indonesia Number 8 of 1981 on the Code of Criminal Procedure (State Gazette of the Republic of Indonesia of 1981 Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 3209). <https://www.dpr.go.id/dokumen/jdih/undang-undang/detail/755>
- Law of the Republic of Indonesia Number 2 of 2002 on the State Police of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2002 Number 2, Supplement to the State Gazette of the Republic of Indonesia Number 4168). <https://www.dpr.go.id/dokumen/jdih/undang-undang/detail/299>
- Law of the Republic of Indonesia Number 1 of 2023 on the Penal Code (State Gazette of the Republic of Indonesia of 2023 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 6842). <https://www.dpr.go.id/dokumen/jdih/undang-undang/detail/1818>
- Lestari, R. A., Rivanie, S. S., & Soewondo, S. S. (2023). Implementation of Restorative Justice for Narcotic Abusers: A Case Study in the Takalar Public Attorney's Office. *SIGn Jurnal Hukum*, 5(1), 207-220. <https://doi.org/10.37276/sjh.v5i1.275>
- Mertokusumo, S. (2014). *Teori Hukum*. Cahaya Atma Pustaka.
- Nasrullah, N. (2023). Implementing Chemical Castration Punishment: A Perspective on Criminal Law and Human Rights. *SIGn Jurnal Hukum*, 4(2), 402-413. <https://doi.org/10.37276/sjh.v4i2.282>
- Nurfatlah, T., Abadi, S. H. K., & Efendi, S. (2024). Konsep Residive dalam Kitab Undang-Undang Hukum Pidana Nasional Ditinjau dalam Perspektif Tujuan Pemidanaan. *Unizar Law Review*, 7(1), 90-101. <https://doi.org/10.36679/ulr.v7i1.70>
- Oktobrian, D., Hendriana, R., Retnaningrum, D. H., & Nurhuda, M. L. (2023). Pengawasan Pelaksanaan Kesepakatan Mediasi Penal dalam Penerapan Restorative Justice Pada Tahapan Penyidikan. *Jurnal Litigasi*, 24(1), 14-39. <https://doi.org/10.23969/litigasi.v24i1.6208>
- Pally, H. (2024). Integrasi Restorative Justice dalam Sistem Peradilan Pidana. *Tumou Tou Law Review*, 3(1), 31-40. <https://doi.org/10.35801/tourev.v3i1.48170>

- Parindo, D. (2025). Tinjauan Yuridis Putusan Pengadilan Tentang Rehabilitasi Penyalahguna Narkotika dalam Perspektif Keadilan Restoratif. *Jurnal Hukum Indonesia*, 4(4), 205-223. <https://doi.org/10.58344/jhi.v4i4.1773>
- Pasaribu, F. L. H., Marwiyah, S., Prawesthi, W., & Amiq, B. (2024). Keadilan Restoratif pada Tingkat Penyidikan bagi Pecandu Narkotika dan Korban Penyalahguna Narkotika. *Court Review: Jurnal Penelitian Hukum*, 4(3), 11-23. <https://doi.org/10.69957/cr.v4i03.1509>
- Purba, R. J., & Pane, B. E. M. (2025). Implementasi Restorative Justice dalam Penyelidikan dan Penyidikan Tindak Pidana. *Jurnal Sosial dan Sains*, 5(5), 1525-1535. <https://doi.org/10.59188/jurnalsosains.v5i5.32288>
- Qamar, N., & Rezah, F. S. (2020). *Metode Penelitian Hukum: Doktrinal dan Non-Doktrinal*. CV. Social Politic Genius (SIGn).
- Qamar, N., & Rezah, F. S. (2022). The Dichotomy of Approach in the Study of Legal Science: A Critical Review. *SIGn Jurnal Hukum*, 4(2), 191-201. <https://doi.org/10.37276/sjh.v4i2.162>
- Radbruch, G. (1932). *Rechtsphilosophie*. Quelle & Meyer.
- Ramadhani, D. A. N., Shafira, M., Dewi, E., Jatmiko, G., & Warganegara, D. (2024). Implementasi Perluasan Makna Asas Legalitas Berdasarkan Kitab Undang-Undang Hukum Pidana (KUHP) Nasional. *Jurnal Ilmiah Hukum dan Hak Asasi Manusia*, 3(2), 65-74. <https://doi.org/10.35912/jihham.v3i2.2529>
- Rawls, J. (2001). *Justice as Fairness: A Restatement*. Harvard University Press.
- Regulation of the Head of the State Police of the Republic of Indonesia Number 6 of 2019 on Investigation of Criminal Acts. <https://short-url.org/1gnln>
- Regulation of the State Police of the Republic of Indonesia Number 8 of 2021 on the Handling of Criminal Offenses Based on Restorative Justice (Bulletin Gazette of the Republic of Indonesia of 2021 Number 947). <https://peraturan.go.id/id/peraturan-polri-no-8-tahun-2021>
- Reza, A., & Siregar, F. R. (2023). Penerapan Prinsip Restorative Justice dalam Proses Penyidikan Anak Sebagai Pelaku Kejahatan. *Innovative: Journal of Social Science Research*, 3(4), 7718-7730. Retrieved from <https://j-innovative.org/index.php/Innovative/article/view/4516>
- Sampara, S., & Husen, L. O. (2016). *Metode Penelitian Hukum*. Kretakupa Print.
- Scondery, A. (2024). Penerapan Restorative Justice Terhadap Pelaku Tindak Pidana Narkotika pada Tahap Penyidikan (Studi Pada Satuan Reserse Narkoba Polres Serang). *Syntax Idea*, 6(8), 3772-3779. <https://doi.org/10.46799/syntax-idea.v6i8.4410>
- Setiawan, D., Juna, A. M., Fadillah, M. S., Oktarianda, S., Zulkarnen, Z., Rizal, A., & Satrio, I. (2024). Prinsip Proporsionalitas dalam Penerapan Hukuman Pidana di Indonesia. *Jurnal Ilmiah Mahasiswa Multidisiplin*, 1(3), 266-278. <https://doi.org/10.71153/jimmi.v1i3.144>
-

- Sofian, A. (2021, June 21). *Terbitnya SP3 (Surat Perintah Penghentian Penyidikan) dan Praperadilan*. Business Law Faculty of Humanities Binus University. Retrieved August 15, 2025, from <https://business-law.binus.ac.id/2021/06/21/terbitnya-sp3-surat-perintah-penghentian-penyidikan-dan-praperadilan>
- Sukardi. (2020). *Konsep Penyidikan Restorative Justice*. PT. Raja Grafindo Persada.
- Sunaryo, S., & Purnamawati, S. A. (2019). Paradigma Hukum yang Benar dan Hukum yang Baik (Perspektif Desain Putusan Hakim Perkara Korupsi di Indonesia). *Hukum Pidana dan Pembangunan Hukum*, 1(2), 1-10. <https://doi.org/10.25105/hpph.v1i2.5465>
- Waluyo, B. (2015). Relevansi Doktrin Restorative Justice dalam Sistem Pemidanaan di Indonesia. *Hasanuddin Law Review*, 1(2), 210-226. <https://doi.org/10.20956/halrev.v1i2.80>
- Zehr, H. (2015). *Changing Lenses: Restorative Justice for Our Times*. Herald Press.